

2-1700-8267-2

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Susanna Fetch,

Complainant,

v.

Goal Systems International,  
Inc., now known as Legent  
Corporation,

Respondents.

FINDINGS OF FACT,  
CONCLUSIONS  
AND ORDER

The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge from the Minnesota Office of Administrative Hearings on July 7-13, 1994, in Minneapolis, Minnesota, pursuant to a Complaint and Notice and Order for Hearing dated September 23, 1993.

Appearances: Donald Horton and Debrah B. Port, Horton & Associates, 700 Title Insurance Building, Minneapolis, Minnesota 55401, appeared on behalf of the Complainant, Susanna Fetch (hereinafter Complainant, Employee or Ms. Fetch); and Penny M. Tibke, Gray, Plant, Mooty, Mooty & Bennett, P.A., 3400 City Center, 33 South Sixth Street, Minneapolis, Minnesota 55402-3796, appeared on behalf of the Respondent, Legent Corporation, known as Goal Systems International, Inc. during the Complainant's employment with Respondent (hereinafter Goal Systems, Employer or Respondent).

The record closed on October 7, 1994, the date of receipt by the Administrative Law Judge of the final post-hearing written arguments.

NOTICE

Pursuant to Minn. Stat. § 363.071, subd. 2 (1992), this Order is the final decision in this case. Pursuant to Minn. Stat. § 363.072 (1992), the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63-14.64 (1992).

#### STATEMENT OF ISSUES

The issues for determination in this proceeding are as follows: Was the Complainant, Susanna Fetch, subjected to sex discrimination in employment by the Respondent and, if so, what damages, if any, were occasioned by such action; and did the Respondent engage in reprisal against the Complainant, and if so, what damages, if any, were occasioned by such action.

Based upon all the files, records, and proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. Legent Corporation, formerly known as Goal Systems International, Inc., is a corporation engaged, primarily, in the business of selling computer software. During the relevant time period, it maintained an office in Hennepin County, Minnesota that it had acquired from Training America, Inc. in an asset purchase. The Complainant, Ms. Fetch, was employed at the Minneapolis Office of Goal Systems.

2. The relevant time period for Complainant's claims is August of 1991 through July 15, 1992. Tr. 13.

3. In August of 1991, Goal Systems International, Inc. purchased a majority of the assets of Training America, Inc., another software computer company. Def. Ex. 81. When that asset purchase was made, all of Training America's salespersons, including the Complainant, were offered, and all accepted, employment with Goal Systems. The other salespersons that were hired by Goal Systems from Training America were Rick Eagan, Sharon Brown and Valerie King. Def. Ex. 25.

4. George Langan, the chief operating officer of Training America, Inc., made a job offer to Training America employees a condition of the acquisition. Mr. Langan then assumed an executive position with Goal Systems. The acquired employees of Training America were of little real value to Goal Systems because of the differences in the market niches of the two companies. Training America sold a lower cost product that could be purchased by lower level employees relatively inexpensively and integrated into a computer system without the necessity for major system reconfiguration. The Goal Systems product was quite expensive, required major system adaptation for its use and was likely to be purchased by higher level employees or executives only after an extensive and extended sales promotional effort.

5. In the absence of the condition of the asset purchase imposed by Mr. Langan, it is doubtful that Ms. Fetch would have been independently hired by Goal Systems.

6. During the Complainant's employment with Goal Systems, her immediate supervisor was James Paler. Goal Systems terminated Mr. Paler in the Fall of 1993 for reasons of non-performance, lack of performance relative to quota, an internal restructuring that was taking place within Goal. Tr. 506. Ms. Fetch described Mr. Paler at the hearing as a "bumbling idiot".

7. Mr. Paler supervised the regional office in Chicago, Illinois, where the other salespersons in the Central Region were located. Ms. Fetch was the sole salesperson located in the small, local Minneapolis Office of Goal Systems. The Minneapolis Office was only being maintained temporarily while the Training America purchase was being absorbed.

8. When the Complainant became a Goal Systems employee in August of 1991, she remained in the territory for which she had responsibility while with Training America. Other salespersons within that territory, the Central Region, who also had Mr. Paler as an immediate supervisor, included David C. Timothy Willick, Rick Checci, and Wesley Herczeg. Tr. 828.

9. When the Complainant began work at Goal Systems in August of 1991, her base salary was \$30,000, which had been her salary as an employee of Training America. Her salary at Goal Systems was consistent with the Employer's common policy to initially pay acquired employees the same salary they had received at their previous employer until they could be evaluated by Goal Systems management. Tr. 344-45. Consistent with that policy, the salary of Sharon Brown was initially set at \$36,000, Valerie King's at \$34,000, and Rick Egan's at \$32,000. Def. Ex. 25.

10. The initial setting of the Complainant's base salary with Goal Systems was not related to her gender. She did not expect to get an automatic raise once she became a Goal Systems employee. Tr. 648.

11. Ms. Fetch did not allege that her salary at Training America related to other Training America employees constituted sexual discrimination, or was in any other way inappropriate, as related to her background and experience.

12. Few Goal Systems employees were long-term employees of the Company. Turnover was substantial. The first year was usually spent by a new sales employee developing a "pipeline" or a group of accounts that would eventually lead to sales. Pipeline development was a continuing necessity even for successful employees. After an initial year of few or no sales and maximum pipeline development, salespersons were expected to produce significant sales on a continuing basis.

13. Of the four Training America employees acquired by Goal Systems in the August 1991 asset purchase, all four, including Valerie King, Rick Egan, Sharon Brown and Susanna Fetch, were no longer employed by Goal Systems after August of 1992. Mr. Egan, Ms. King and Ms. Brown, though located in different regions than Ms. Fetch, had either resigned or were terminated by August of 1992. Tr. 76-79; Tr. 90-92; Def. Ex. 84; Def. Ex. 51.

14. When Ms. Fetch began working for Goal Systems in August of 1991, the Goal Systems prospective accounts in the Central Region had already been assigned to the existing salespersons within the Central Region. The fiscal year of Goal Systems began in February of each calendar year. No Training America employees who were acquired by Goal Systems received immediately an exclusive territory. At least Mr. Egan, however, did receive an exclusive territory, the State of Florida, in November of 1991. This was, however, an unusual situation. Moreover, Mr. Egan worked out of a different regional office, Atlanta, and was not supervised by Mr. Paler.

15. The Complainant was told by Mr. Paler, when she began work in August of 1991 to continue working on accounts that she had worked at while she was

employee of Training America. Ms. Fetch also made some "cold calls". The making of cold calls, however, was not encouraged because many potential customers would already have been assigned to an existing salesperson within the Central Region, if the customer had a large mainframe computer with enough power and capability to run the Goal Systems software product. Tr. 601.

16. In addition to some cold calling and former accounts at Transamerica, Ms. Fetch also worked on the following accounts: Minnesota Mutual Life Insurance; First Data Resources; the Wisconsin Department of Transportation; Northwestern National Life Insurance Company; the Burlington

Northern Railway Company; Schneider National; and Kraft Foods. Mr. Paler also provided Ms. Fetch with some sales leads that she attempted to follow up. Tr. 130.

17. At some point in time prior to March of 1992, the following three accounts were removed from Ms. Fetch's assignments: 3M; the Wisconsin Department of Transportation; and Hewitt Associates. These accounts were removed from Ms. Fetch because they were accounts to which another salesperson had already been assigned. There was considerable confusion at Goal Systems regarding accounts during the initial months following the Training America asset purchase. Lists and assignments changed as overlap was eliminated. Tr. 287; Tr. 296; Tr. 287; Tr. 296. At the time that the accounts were clarified as not being within the Complainant's authorized accounts, Ms. Fetch was not near closing a sale with any of the three entities. Tr. 643; Tr. 644.

18. There is no evidence in the record that the initial assignments given to Ms. Fetch or the accounts that were later clarified as not being part of her responsibility were restricted or influenced by her gender.

19. Ms. Fetch believed that she did not receive appropriate support from her supervisor, Mr. Paler. Mr. Paler oftentimes was lax in returning her telephone calls. On several occasions, Mr. Paler had been scheduled to attend sales calls with Ms. Fetch and cancelled his attendance at the last minute. Mr. Paler also spent little, if any, time with Ms. Fetch in developing strategies for sales or pipeline development. There is no evidence in the record, however, that Mr. Paler provided more direct support to Ms. Fetch's male colleagues than he did to her. Tr. 611-12.

20. Mr. Paler did accompany Ms. Fetch to at least introductory meetings with several of her clients. Tr. 589-94. There is no evidence in the record that Mr. Paler attended significantly more client meetings with other salespersons than he did with the Complainant. Tr. 596-600.

21. Ms. Fetch believes that she was not afforded the same access to sales development opportunities as were her male co-workers. Specifically, she believes that she was denied an opportunity to attend a "Solution Sales Seminar" in November of 1991, after the Training America acquisition, and several other sales meetings in the late spring and early summer of 1992. "Solution Selling Seminar" was offered in November of 1991, however, and other training and sales meetings that the Complainant asserts she was not allowed to attend were scheduled to occur after she had already been placed on a performance improvement plan and had decided to seek employment elsewhere. Tr. 41-42; Tr. 146-48; Tr. 665-66. Mr. Williams, the Company's personnel manager, approved of Ms. Fetch being excluded from the later sales meetings because he

was aware that she had decided not to attempt to achieve the goals of the performance improvement plan.

22. Ms. Fetch did not receive "CBT" training, a computer-based training on Goal Systems products. It was not initially brought to her attention and she only learned of its existence at some later time before her separation from Goal Systems. There is no evidence in the record, however, that the failure to provide Ms. Fetch with "CBT" training had any connection with her sex.



23. Ms. Fetch did not receive sales materials and supplies, including price lists, product descriptions and audiovisual materials in a timely fashion. She made such requests of Mr. Paler on several occasions. When the efforts proved unsuccessful, she obtained the materials directly through the Company's Columbus, Ohio office. There is no evidence in the record, however, that Ms. Fetch failed to receive sales support information promptly because of her sex.

24. Many of the salespersons had "account files" for their accounts which stated some information about the account and the results of previous contacts. Ms. Fetch asserts that she did not receive account files for customers that were assigned to her in March of 1992. When she asked Mr. Paler for such files, he stated that they were not really that important but if he found them he would transmit them to her. Ms. Fetch does not know whether other salespersons were initially given account files or whether such salespersons developed the account files themselves. Tr. 185-87.

25. During her course of employment with Goal Systems, Ms. Fetch discussed with some other employees and friends her lack of support from Mr. Paler. Never, however, did she articulate gender discrimination as the cause of the status of the relationship.

26. The work atmosphere at Goal Systems was not hostile to female employees, including female salespersons.

27. By January of 1992, the Complainant had made only one sale and had no pipeline of impending or future sales. She became worried about her continuing tenure at Goal Systems. She did not believe that she was receiving needed support from her supervisor, Mr. Paler, and Goal Systems, generally. At about the same time, an acquaintance with Goal Systems told her that she was being paid less than male salespersons. Ms. Fetch's main concern in January of 1992, however, was to become aware of and satisfy all position requirements of a Goal Systems salesperson.

28. In January of 1992, Robert Williams, Goal Systems' Director of Corporate Employee Relations, was visiting all Goal Systems' offices as he did periodically. While he was at the Minneapolis local office, Ms. Fetch approached him while he was at a work station reading E-Mail on a computer. Ms. Fetch stated to Mr. Williams that she believed she was underpaid. She also told him she was worried about her accounts and wanted to make sure she was fulfilling all of the requirements of her position. She requested that Mr. Williams send her a salary range statement and a position description of her duties as a Goal Systems salesperson. Ms. Fetch did not specifically state to Mr. Williams that she believed she was the victim of sex discrimination or that

she believed Mr. Paler was treating her differently than male co-workers in Central Region. Mr. Williams did not interpret anything Ms. Fetch said to be a complaint of sex discrimination. Mr. Williams told Ms. Fetch to send him a written request. She later did so. Ms. Fetch eventually received a sketchy position description from a secretary in Mr. Williams' office.

29. There is no evidence in the record that Mr. Williams ever told Mr. Paler about his conversation with Ms. Fetch. Both Mr. Paler and Mr. Williams deny discussing the matter. Tr. 408-09; Tr. 548.

30. Although the Complainant was relatively successful as a salesperson at Training America, she was not at Goal Systems. During the nine months that she actively sought sales during her employment at Goal Systems, she made only two sales, which put her at 6% of her "NLR" quota for 1991, and 54% of her "NLR" quota for February 1992 - April 1992.

31. The Complainant received her new territory listing of accounts for fiscal year 1993 at the same time that the other salespersons in her region received their new territory listings, early March of 1992. Tr. 608.

32. On April 28, 1992, the Complainant was given a performance plan from her supervisor, Mr. Paler. Tr. 197; Tr. 839-44; Def. Ex. 1. Paler made the decision to place the Complainant on a performance plan because of her lack of sales and her lack of a pipeline for future sales in the foreseeable future. Mr. Williams was aware that Ms. Fetch had been placed on a performance plan. He believed it was appropriate because of the Employee's lack of performance.

33. The purpose of the Goal System's performance improvement plan was to give an employee some warning that the employee was having performance problems and to put the Employee on notice that, unless the situation improved according to the terms of plan, termination was likely. Tr. 555.

34. Mr. Paler and Ms. Fetch met in Chicago on April 28, 1992. At the end of the meeting, which was to discuss sales development, Mr. Paler informed Ms. Fetch that she was being placed on a performance improvement plan. He showed her a copy of the plan that had been prepared.

35. During the April 28, 1992, meeting between the Complainant and Mr. Paler, Mr. Paler expressed his opinion that the Complainant probably could not meet the requirements of the performance plan. He suggested that she spend the next 60 days trying to find a new job. The Complainant agreed with Mr. Paler that she would probably be unable to meet the requirements of the performance plan. Tr. 217, Tr. 229; Tr. 846.

36. During her discussions with Mr. Paler, the Complainant requested that she be allowed to maintain her employment with Goal Systems until July 15, 1992. She requested that additional time because she was in the process of purchasing a house in Minnesota. She desired to maintain her employment status until the middle of July 1992 to insure that she received her mortgage. Mr. Paler agreed to the Complainant's request. Tr. 421-22; Tr. 954-55.

37. During the Spring of 1992, Mr. Paler also placed Mr. Checchi, Mr. Willick, and Mr. Herczeg of the Central Region on performance plans that were

either identical to or substantially similar to the performance plan given to the Complainant. Def. Ex. 18, Def. Ex. 53; Def. Ex. 58.

38. At the time that Mr. Willick was placed on a performance plan, his percentage of performance to quota for fiscal year 1993 was better than the Complainant's. Tr. 427; Def. Ex. 42.

39. When Mr. Paler presented Mr. Willick with his performance plan, he told Mr. Willick that he probably could not meet the requirements of the performance plan. Tr. 847.

40. Mr. Willick's employment with Goal Systems ended in June of 1992, approximately 60 days after he received his performance plan. Tr. 428, Def. Ex. 44.

41. After the Complainant received the performance plan in April of 1992, she made no further attempts to make sales. Tr. 229. She sent out resumes and attempted to find alternative employment.

42. Of the 16 salespersons employed by Goal Systems in April of 1992, at least 12 were no longer working for Goal Systems at the time of this hearing. Tr. 433; Def. Ex. 42. None of the salespersons from the Central Region that had been placed on a performance plan in the Spring of 1992 were still employed by the Respondent at the time of the hearing.

43. After the Complainant left the employment of Goal Systems in July 1992, she was not physically replaced by a male. Tr. 450. Her accounts were, however, divided among persons who were male.

44. By April 2, 1992, the Complainant had made the decision that if Goal's office in Minneapolis were to close, she would not move to another location to keep her job. Tr. 663. In July of 1993, Goal closed its Minneapolis office. Tr. 728.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Administrative Law Judge has subject matter jurisdiction hereunder pursuant to Minn. Stat. §§ 363.071, subds. 1, 2 and 14.50 (1992).

2. Proper notice of the hearing was timely given and all relevant substantive and procedural requirements of statutes and rules have been fulfilled.

3. The Respondent is an employer as defined in Minn. Stat. § 363.01, subd. 15 (1992).

4. The Complainant has the burden of establishing the charges in the Complaint by a preponderance of the evidence.

5. The Complainant has failed to establish a prima facie case of employment discrimination based on sex.

6. Even if the Complainant had established a prima facie case of employment discrimination based on sex, the Respondent has articulated legitimate, non-discriminatory reasons for any differing treatment experienced by the Complainant.

7. The Complainant has not demonstrated that the legitimate non-discriminatory reasons articulated by the Respondent were merely a pretext or cover for discrimination and has not demonstrated that any adverse action she was subjected to was a result of intentional discrimination based on sex.

8. As a consequence of Conclusions 3-7, supra, the Complainant has not established by a preponderance of the evidence discrimination in employment because of her sex within the meaning of Minn. Stat. § 363.03(1) (b) and (c) (1992).

9. The Complainant has not established a prima facie case of reprisal discrimination within the meaning of Minn. Stat. § 363.03(7) (1992).

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED: The Complaint herein is dismissed with prejudice and the relief therein requested is in all respects DENIED.

Dated this 16th day of December, 1994.

s/ Bruce D. Campbell  
\_\_\_\_\_  
BRUCE D. CAMPBELL  
Administrative Law Judge

Reported: Brennan & Associates. (612) 854-5536

MEMORANDUM

The Employee, Susanna Fetch, alleges that her employer, Goal Systems International, Inc., discriminated against her in employment on the basis of her sex in violation of Minn. Stat. § 363.03, subd. 1(b) (c) (1992), and engaged in reprisal discrimination, in violation of Minn. Stat. § 363.03(7) (1992). With respect to her claim of disparate treatment based on sex, the Minnesota Courts apply principles developed in McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973). See, Danz v. Jones, 263 N.W.2d 395, 398-99 (Minn. 1970); Anderson v. Hunter, Keith, Marshall & Co., 417 N.W.2d 619, 623-24 (Minn. 1988); Sigurdson v. Isanti County, 386 N.W.2d 715, 719-20 (Minn. 1986).

In order to prevail in a disparate treatment case, a charging party has the burden of establishing a prima facie case of sex discrimination by a preponderance of the evidence. Anderson, supra; Sigurdson, supra. The showing required to establish a prima facie case varies depending on the specific facts.

situation involved. McDonnell-Douglas, supra, 411 U.S. at 802, n. 13. If the charging party establishes a prima facie case, a presumption is created that the employer unlawfully discriminated against the charging party and the burden shifts to the defendant to produce evidence of some legitimate, non-discriminatory reason for its actions. If the defendant meets this burden, the charging party must prove by a preponderance of the evidence that the defendant's reasons were a pretext for discrimination. Anderson v. Hunter, Keith, Marshall & Co, 419 N.W.2d 619 (Minn. 1988); Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-56, 101 Sup. Ct. 1089, 1093 67 L.Ed.2d 207 (1981). At all times, the claimant bears the burden



of establishing the existence of prohibited discrimination.  
Sigurdson v. Isanti County, 386 N.W.2d 715 (Minn. 1986);  
St. Mary's Honor Center v. Hicks, \_\_\_ U.S. \_\_\_, 113 S. Ct. 2742 (1993).

To establish a prima facie case of disparate treatment in employment based on sex, the Complainant must initially show that she is a member of a protected class, that she was treated differently than similarly situated non-protected class members, and that the differential treatment was based on her protected class status. Lamb v. Village of Bagley, 310 N.W.2d 508, 510 (Minn. 1981). In the Findings and Conclusions, the Administrative Law Judge has determined that Ms. Fetch did not establish a prima facie case of disparate treatment in employment based on sex. Ms. Fetch is certainly a member of a protected class, the female sex. Ms. Fetch has not, however, demonstrated that she was treated in a materially different fashion than her male co-workers because of her sex. The Administrative Law Judge finds that the appropriate persons for purposes of comparison to Ms. Fetch are the Goal Systems Sales employees in the Central Region who were supervised by Mr. Paler from the Chicago Regional Office.

In an attempt to establish that she was treated in a materially different fashion than her male co-workers because of her sex, Ms. Fetch initially stated that she was paid less than other salespersons in the Central Region. She was, however, formerly an employee of Transamerica Systems. Ms. Fetch makes no complaint that her salary at Transamerica Systems was in any way discriminatory or otherwise illegal. Salaries were continued temporarily for all Transamerica employees when they were acquired by Goal Systems. New pay levels would have been set in the spring of 1992. By that time, however, Ms. Fetch's performance was viewed to be non-satisfactory.

With respect to her attempts at establishing disparate treatment other than salary considerations, what emerges is a picture of a new employee hired under some duress, located in a small local office at the end of the Company's geographic sales territory which had never functioned as a sales office of Goal Systems, who had formerly worked for a competitor and now desired to service primarily, accounts that were already assigned to existing sales personnel of the Company. When one adds to that Ms. Fetch's description of her supervisor, Mr. Paler, as a "bumbling idiot" and a highly competitive marketplace where employee longevity is not the norm, Ms. Fetch's failure to become a successful salesperson at Goal Systems is easily explainable without reference to sex discrimination. As stated in the Findings, the Complainant's assertions of disparate treatment are either not supported by the record or not supported by evidence that the particular treatment received was the result of the Employee's sex. The Administrative Law Judge agrees with the Respondent that even disparate treatment, without a finding that disparate treatment is the result of intentional discrimination, does not prove a claim of gender

discrimination under the Minnesota Human Rights Act. Respondent's Proposed Findings of Fact, Conclusions of Law, Order for Judgment, and Memorandum, pp. 18-19. Nor was the Complainant treated differently than males in the Central Region who did not achieve their sales goals. At about the same time Complainant was placed on a performance plan, most of the salespersons in the Central Region were also placed on performance plans similar in character. There is no evidence in the record that gender, rather than lack of performance, was the cause of Ms. Fetch being placed on a performance plan.

The Administrative Law Judge concludes that Ms. Fetch never directly complained of sexual discrimination until after she was terminated by Goal Systems. That phrase was never used in her conversation with Mr. Williams, director of employee relations, and it was never discussed contemporaneously with witnesses who testified at the hearing about the problems Ms. Fetch was having in receiving support from Mr. Paler.

The Claimant made some attempts to establish a history of discrimination on the part of the Respondent. There is some evidence that Sharon Brown believed that a person less qualified than her at Goal Systems was offered a management position in the 1986-89 time period and that male salespersons smoked and drank alcohol at two sales meetings. The Complainant also asserts that Goal Systems advertises for employees in magazines directed primarily to a male audience. The Administrative Law Judge contrasts this extremely minimal showing by the Complainant with the lack of any direct evidence of discrimination in the record and the fact that women have achieved positions of prominence at Goal Systems. The Administrative Law Judge finds no hostile environment for women employees at Goal Systems and no history of discrimination on the part of the Respondent.

It could be argued that the Complainant has established a prima facie case of sex discrimination in employment. If the Administrative Law Judge were to so conclude, however, he finds that the Complainant has offered legitimate non-discriminatory reasons for any difference in treatment. This was occasioned not by Ms. Fetch's sex but by the confusion that existed at Goal Systems when the Training America assets were acquired. When this confusion is coupled with Mr. Paler's apparent inability to manage effectively, any inference of discrimination is certainly avoided.

Finally, given the articulation of legitimate non-discriminatory reasons for different treatment, the Complainant would be required to show pretext to bear the ultimate burden of establishing discrimination. Apart from her subjective feelings, Ms. Fetch has not offered sufficient evidence to bear that burden. It is appropriate, therefore, to dismiss the claim of sex discrimination in employment with prejudice.

The Complainant's second assertion is that she was subjected to a reprisal in employment under Minn. Stat. § 363.03, subd. 7(1) (1992). The McDonnell Douglas analysis is also appropriate with a reprisal claim. In order to establish a prima facie case of reprisal, an employee must establish statutorily-protected conduct, adverse employment action by the employer, and a causal connection between the protected conduct and the adverse employment action. Williams v. Metropolitan Waste Control Commission, 781 F. Supp. 1428 (D. Minn. 1992); Hubbard v. United Press International, Inc., 330 N.W.2d 1428 (D. Minn. 1992).

428 (Minn. 1983). If a prima facie case is established, the burden shifts to the employer to proffer a non-discriminatory reason for the adverse employment action. If the employer provides such evidence, the employee must prove that the non-discriminatory reason put forward by the employer is pretextual and that the adverse employment action was a result of intentional discrimination.

The Administrative Law Judge agrees with the Respondent that the Complainant has failed to establish a prima facie case of reprisal discrimination. The Complainant does not assert that she ever complained of sexual discrimination to Mr. Paler or to any other member of the hierarchy at Goal Systems, with the possible exception of Mr. Williams, the personnel

manager. The Administrative Law Judge has specifically found that Ms. Fetcher did not communicate to Mr. Williams that she believed she was the subject of sex discrimination by Mr. Paler. Moreover, there is no evidence in the record that Mr. Williams ever discussed his conversation with the employee with her supervisor, Mr. Paler. Mr. Paler made the initial decision to place the Complainant on a performance plan. She decided that she could not accomplish the goals of that plan and began looking for other employment.

BDC

